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22 *Bard Peripheral Vascular, Inc.*

23 **IN THE UNITED STATES DISTRICT COURT**

24 **FOR THE DISTRICT OF ARIZONA**

25 IN RE: Bard IVC Filters Products Liability  
26 Litigation,

No. 2:15-MD-02641-DGC

27 THE PARTIES' JOINT STATUS  
REPORT FOR THE JUNE 21, 2016  
CASE MANAGEMENT  
28 CONFERENCE

1 In accordance with Paragraph IX of Case Management Order No. 10 [Doc. 1319],  
 2 the Parties hereby submit their Joint Status Report and proposed agenda for the June 21,  
 3 2016 Case Management Conference.

4 **A. Fact Discovery**

5 Fact discovery is proceeding efficiently without any impediments thus far. The  
 6 parties have scheduled the depositions of all witnesses requested by Plaintiffs with the  
 7 exception of one witness who is presently out of the country and one witness who is the  
 8 subject of ongoing discussions between the parties.

9 The following depositions have already been completed:

10	May 3, 2016	Dr. Murray Asch
11	May 11, 2016	Carol Vierling
12	May 17, 2016	Anne Bynon
13	May 24, 2016	Len DeCant
14	June 2, 2016	John DeFord, Ph.D.
15	June 9, 2016	Bret Baird
16	June 16, 2016	Robert DeLeon
17	June 17, 2016	Joe DeJohn

18 The following depositions have been scheduled:

19	July 18, 2016	Abtihal Raji-Kubba
20	July 20, 2016	Kevin Shifrin
21	July 22, 2016	Jack Sullivan
22	July 27, 2016	Bill Little
23	July 27, 2016	Judy Ludwig
24	July 28, 2016	Maureen Uebelacker
25	July 29, 2016	John Wheeler
26	August 3, 2016	Rule 30(b)(6) re: sales, etc.
27	August 4, 2016	Steve Williamson
28	August 10, 2016	John Van Vleet

August 10, 2016	Cindi Walcott
August 12, 2016	Chris Ganser (tentative)
August 19, 2016	Mary Edwards
August 20, 2016	Rule 30(b)(6) re: REACH

**B. ESI Discovery**

As noted in the Joint Report and Dispute Matrix Regarding ESI Discovery and Custodians submitted on May 16, 2016 (Docket No. 1756), the parties have agreed upon a number of custodians for “refresh” collections of ESI as well as a number of newly-identified custodians for collection. The parties continue to meet and confer regarding additional custodians. At present, the only area of dispute is the collection of ESI from persons holding the title of “regional sales manager,” as outlined in the parties’ Joint Report.

With regard to those custodians agreed upon by the parties, the collection and processing of that data is underway. Bard is producing the data on a rolling basis.

**C. FDA Warning Letter**

The parties have scheduled the depositions of the three employees who report to Chad Modra as directed by the Court in Paragraph IV of Case Management Order No. 10 (Docket No. 1319). Pursuant to that same order, the parties filed a joint submission on April 15, 2016 (Docket No. 1471) outlining their remaining areas of dispute regarding further discovery about the warning letter.

**D. Deposition Protocol**

The parties submitted a proposed deposition protocol on April 15, 2016 (Docket No. 1472). The parties have been voluntarily abiding by the terms of that protocol, pending entry of a case management order.

**E. Privilege Issues**

The parties have submitted a number of filings regarding the Plaintiffs’ motion to compel (Docket Nos. 1214, 1476, 1590, and 1976). By order dated June 13, 2016

(Docket No. 2132), the Court has indicated its intent to entertain oral argument regarding the choice of law issues at the June 21, 2016 case management conference.

**F. Resolution of Confidentiality Designations**

Plaintiffs would like to address with the Court how it would prefer to deal with disputes between the parties regarding Bard's designation of various materials as confidential. Plaintiffs have requested of Bard that the parties develop a procedure to address those disputes at this time because the failure to resolve such disputes results in the multiplication of disputes as Bard designates as confidential deposition testimony regarding documents that would be the subject of dispute or that is on the same subject matter. Plaintiffs believe that early resolution of some of these disputes will result in later efficiency by reducing the total quantity of confidentiality designations made by Bard.

Bard believes the plaintiffs are raising this issue prematurely, and that an attempt to address the issue at this juncture will create unnecessary work and expense for the Court and the parties. Few, if any, confidential documents will need to be filed with the Court until dispositive motions are filed, which will likely be in mid-2017. The standard applicable to an assessment of Bard's confidentiality claims will differ depending on the stage of proceedings at the time the issue arises. Presently, during discovery or with the filing of non-dispositive motions, Bard need only establish "good cause" to maintain a confidentiality designation. *See, e.g., Phillips v. General Motors Corp.*, F.3d 1206, 1210 (9<sup>th</sup> Cir. 2002). If, however, documents are later submitted in open court or under seal in connection with a dispositive motion, a different standard applies. In those situations, a party claiming confidentiality must demonstrate "sufficiently important countervailing interests" to overcome the "strong presumption of public access" to judicial documents. *Phillips*, 307 F.3d at 1213; compare *Seattle Times Co. v. Rhinehart*, 407 S.S. 20, 33, 104 S. Ct. 2199, 81 L.Ed.2d 17 (1983) ("Much of the information that surfaces during pretrial discovery may be unrelated, or only tangentially related, to the underlying cause of action. Therefore, restraints placed on discovered, but not yet admitted, information are not a restriction on a traditionally public source of information.")

Under the circumstances, Bard believes the adjudication of confidentiality challenges at this time will be a needless waste of judicial resources and an unnecessary expenditure of time and expense by the parties. Few of the documents designated as confidential will even be submitted to the Court prior to the filing of dispositive motions, and a different standard altogether will apply then. Plaintiffs' suggestion that those claims be litigated now will simply require the parties to litigate the same issues twice, under two different standards.

**G. Bellwether Process Timing**

The Parties intend to report to the Court on the timing of the bellwether process and the potential need to adjust the schedule slightly due to the delay in Bard's receipt of Plaintiff Profile Forms from certain plaintiffs in the MDL. Lead Counsel for Plaintiffs believes that the delay was the result of confusion and docketing issues that resulted from having two separate orders that addressed due dates for service of Plaintiff Profile Forms and the timing of the entry of Case Management Order No. 11. Lead Counsel for Plaintiffs believes that all or virtually all such forms have now been served and that Bard will have all or virtually all of its Defendants Profile Forms for all cases that are part of the Initial Plaintiff Pool. Under these circumstances, it may be appropriate to move the remaining deadlines 7 to 10 days to accommodate for these earlier delays.

DATED this 15th day of June 2016.

GALLAGHER & KENNEDY, P.A.

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8 **CERTIFICATE OF SERVICE**

9 I hereby certify that on June 15, 2016, the foregoing was electronically filed with  
10 the Clerk of Court using the CM/ECF system which will automatically send email  
11 notification of such filing to all attorneys of record.

12 s/ Deborah Yanazzo  
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